Choctaw Manufacturing Company, Inc., Debtor-in-Possession *and* Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE). Case 15–CA–16906

September 11, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Based on a charge, amended charge, and second amended charge filed by the Union on February 18 and 26, and March 31, 2003, respectively, the General Counsel issued the complaint on April 4, 2003, against Choctaw Manufacturing Company, Inc., Debtor-in-Possession, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 11, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On June 17, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by April 18, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated May 28, 2003, notified the Respondent that unless an answer were received by June 9, 2003, a Motion for Default Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Since about August 7, 2002, the Respondent has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business.

At all material times, the Respondent, a corporation with an office and place of business in Silas, Alabama, has been engaged in manufacturing apparel. Annually, the Respondent, in conducting its business operations described above, purchases and receives at its Silas, Alabama facility goods valued in excess of $50,000 directly from points outside the State of Alabama, and sells and ships, from its Silas, Alabama facility goods valued in excess of $50,000 directly to points outside the State of Alabama.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

R. Malcolm Utsey	President
Randy Utsey	Manager
James "Jim" Giles	Plant Manager
Lois Trailor	Supervisor

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at the Employer's Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

About November 6, 1978, the Amalgamated Clothing Workers of America, AFL–CIO (Amalgamated), was certified as the exclusive collective-bargaining representative of the unit.

[1] The complaint and the reminder letter served on the Respondent by certified mail were returned marked "refused." It is well settled that a respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there.

After the merger of Amalgamated with the Textile Workers Union of America, AFL–CIO to form the Amalgamated Clothing and Textile Workers Union, AFL–CIO (ACTWU), about July 1995, ACTWU merged with the International Ladies' Garment Workers' Union, AFL–CIO to form the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE) (the Union). Since July 1995, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since 1995, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from February 1, 1999 to January 31, 2002, and extended through July 31, 2002.

At all times since July 1995, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About the week of November 24, 2002, the Respondent unilaterally changed its existing practice of paying unit employees the two paid holidays of Thanksgiving day and the Friday following Thanksgiving by failing and refusing to pay the majority of eligible unit employees for either paid holiday and by paying the remaining five or six eligible unit employees only one of the two paid holidays.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing its existing practice, about the week of November 24, 2002, of paying unit employees for the two paid holidays of Thanksgiving day and the Friday following Thanksgiving by failing and refusing to pay the majority of eligible unit employees for either paid holiday and by paying the remaining five or six eligible unit employees only one of the two paid holidays, we shall order the Respondent to rescind this unilateral change and make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed *in New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Choctaw Manufacturing Company, Inc., Debtor-in-Possession, Silas, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE), as the exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing, contrary to its past practice, to pay unit employees for the two holidays of Thanksgiving day and the Friday following Thanksgiving. The unit is:

> All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at the Employer's Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unilateral change in its practice of paying unit employees for the two holidays of Thanksgiving day and the Friday following Thanksgiving.

(b) Make the unit employees whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of its failure to continue this practice about the week of November 24, 2002, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an elec-

tronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Silas, Alabama, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since the week of November 24, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 11, 2003

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with the Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC (UNITE), as the exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing, contrary to our past practice, to pay unit employees for the two holidays of Thanksgiving day and the Friday following Thanksgiving. The unit is:

> All production and maintenance employees, including machine operators, mechanics, packers and cutting room employees employed at our Silas, Alabama facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unlawful unilateral change in our practice of paying unit employees for the holidays of Thanksgiving day and the Friday following Thanksgiving.

WE WILL make our unit employees whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of our failure to continue this practice about the week of November 24, 2002.

CHOCTAW MANUFACTURING COMPANY, INC.